

MILFORD PLANNING BOARD PUBLIC HEARING
May 6, 2014 Board of Selectmen's Meeting Room, 6:30 PM

Present:

Members:

Janet Langdell, Chairperson
Paul Amato
Kathy Bauer
Chris Beer
Steve Duncanson
Judy Plant
Susan Robinson, Alternate member

Staff:

Jodie Levandowski, Town Planner
Shirley Wilson, Recording Secretary
Niko Giokas, Videographer

Excused:

Tom Sloan

MINUTES:

1. Approval of minutes from the 4/15/14 meeting.

NEW BUSINESS:

2. **Carol Colburn – Osgood Rd & Woodhawk Dr – Map 51, Lot 1;** Public hearing for a waiver request from Milford Development Regulations, Section 7.02 Roadway Standards Charts and continuation of application for major open space subdivision creating twenty-seven (27) new residential lots.
(Tabled from 4/15/14 meeting)

OLD BUSINESS:

3. **Laurie Shiffer/Classic Bay Farm – Ponemah Hill Rd – Map 54, Lot 13-2;** Major site plan to construct an indoor equestrian riding arena with attached stalls and associated site improvements.
(Tabled from 4/15/14 meeting)

OTHER BUSINESS:

4. Rite Aid Grand Re-opening

Chairperson Langdell called the meeting to order at 6:35PM. She introduced the Board and staff, then explained the ground rules for the public hearing, and read the agenda into the record. She noted that Susan Robinson, alternate member would be sitting in for the absent Tom Sloan.

MINUTES:

J. Langdell verbally submitted a revision for the 4/15/14 minutes. P. Amato made a motion to approve the minutes from the 4/15/14 meeting, as amended. S. Duncanson seconded and all in favor, with K. Bauer abstaining.

NEW BUSINESS:

Carol Colburn – Osgood Rd & Woodhawk Dr – Map 51, Lot 1; Public hearing for a waiver request from Milford Development Regulations, Section 7.02 Roadway Standards Charts and continuation of application for major open space subdivision creating twenty-seven (27) new residential lots.

Present:

Harry Standel, Osgood Rd

Jennifer Siegrist, Osgood Rd

Guy Scaife, Town of Milford

Penny Seaver, Bean, Seaver & Smith

Chairperson Langdell recognized:

Steve and Carole Colburn, owners

Randy Haight, Meridian Land Services, Inc.

Jay Heavisides, Meridian Land Services, Inc.

Chairperson Langdell noted that this application was tabled from the 4/15/14 meeting and re-read the notice into the record. S. Wilson read the abutters list into the record.

R. Haight presented plans dated 4/17/14 and said he received an email late this afternoon that CEI and Fred Elkind were okay with the drainage. J. Langdell added that the emails dated 5/6/14 pertained to questions regarding the spillway and all have been answered. R. Haight went on to explain that the waiver request was a result of the discussion at the last meeting about road length and the construction thereof and offered some statistics relative to the request. The adjoining subdivision, just on Woodhawk Dr as it exists today, has twenty-two (22) residential buildings on the dead-end road and across the street, Noon's Quarry, has thirty-two (32) houses on a dead-end street. Until this proposal came along, there was no real alternate for a second access for the Badger Hill Development, so this is a real plus. This request will only build about half of the road adding eight (8) new buildings. There is also very good incentive to finish the road because there are nineteen (19) more lots. We feel this is a good compromise and the Colburns are willing to stipulate on the plan that the rest of the road will be built within five (5) years. We also understand the concern pertaining the conveyance of the open space until the last lot, but documentation will be in place and we will provide the conservation easement at the time of plan recording so that the Town will have the benefit of the easement over the entirety of the open space with the caveat that we would be able to build all the erosion control and engineering designs to manage stormwater. When all the lots are sold we would then convey the deed to the Town.

J. Langdell brought up the interdepartmental comments and concerns with the road length and the Fire Department's capability of addressing a situation there. R. Haight said those comments are only looking at this particular situation when you have so many other circumstances in town that they have to defend and do defend. To suggest they can defend Mile Slip Rd, a 7000-8000 ft dead-end road with numerous structures, and not this new road with only eight (8) new lots is ridiculous. This circumstance is unique and the full road is designed and will be in place within five (5) years, unlike Noon's Quarry and Badger Hill where they only showed potential future connections. J. Levandowski said she spoke with Jason Smedick today regarding the Fire Dept comments and he wanted to add that Fire code cannot require a developer to install automatic fire suppression or sprinklers; however, there is a recent court case, *Atkinson vs Malborn Realty Trust*, that could alter that *if the local fire chief finds site conditions that make access difficult, sprinklers may be required for one and two family structures, despite the prohibition in RSA 153.5 against such requirements.* J. Langdell noted that this case, listed on page 35 of the Nov/Dec 2012 NHLGC.org document, was where someone had converted a camp to a full-time residence

and the driveway conditions were inadequate for fire apparatus, so there was more to the context than just sprinklers.

R. Haight said our intention is to build to the intersection of Woodhawk and Nye, as shown, but also build the second wetlands crossing which provides a T for one hammerhead and then continue with the 500 ft along Nye and build the second hammerhead. The second phase of the road along Woodhawk Dr is far more attractive from a development potential with nineteen (19) more lots. The entire road length will be 4,600 to 4,700 ft, so the phasing is about half way. P. Amato said this potentially gives us a second access to the Badger Hill development, which we've been looking at for a very long time; maybe it won't be next month but it will be designed. He'd rather see the road built out at once, but that may not be economically feasible. If we're going to phase the building lots then we should allow for the road to be phased. We would just have to work out the details.

J. Levandowski read the building permit phasing options from the Development Regulations, Section 5.017.A. J. Langdell said this Board is aware that we can modify, by front or rear loading of building permits as needed as long as the total number is still dispersed over the total number of years required for the development.

K. Bauer said she was personally concerned with the DPW, Fire Department and Ambulance concerns regarding the 2,300 ft dead end road. R. Haight clarified that there will be a turn-around at 1,800 ft and this will be maintained as Nye Dr up until the time it is connected with Woodhawk Dr. J. Langdell added that all this documentation brought up concern with the quality of the existing access and continuing concern with the future development of that road that it will not be to town specifications. It has to be and that was our understanding when you came in for the subdivision of those four (4) lots. R. Haight said he was 100% in agreement and it will have to be brought up to town standards. That is the minimum and the Board can certainly add that as a stipulation for it to be done before the first building permit is issued. Some prior discussion between the owner and developer of those lots got muddled, but we fully understand that this will not go forward unless it is brought up to town specifications. We've also had a scenic road hearing for that opening and we don't feel another is warranted. J. Langdell said that was mentioned in staff comments possibly due to the additional work to improve the intersection. P. Amato said the scenic road hearing was adequate; it's just that the construction hasn't been done yet. J. Langdell also noted that per discussion with staff, private land owners don't need to have a scenic road hearing according to current interpretation of the RSA.

Chairperson Langdell opened the meeting to the public.

J. Siegrist said Osgood Rd Extension, Woodhawk Dr, and Badger Hill Rd are pretty wide, in pretty good condition and somewhat easy to walk on. Her concern is where the houses on Nye Dr abut Osgood Rd; they have very rough cut culverts that are unmarked and completely unfinished. One of the new homeowner's cars slid right into it this past winter. The road is so thin and narrow there and there are no sidewalks once you get outside the oval area. It's so dangerous to walk or ride a bike but when people go 50 mph down that skinny road and with those culverts, it becomes life and death issue. Can those culverts be finished and what about the new development. Will they be finished, will there be berms and will water be moved appropriately?

G. Scaife said he was pleased to see this project moving ahead and wishes it success, but he would like to encourage the Board to consider not approving the waiver request. There are extreme concerns, as expressed by staff. This planned subdivision was on the books many years ago and good intentions sometimes get delayed. One of the very first issues I had to deal with when I started in 2006 was a neighborhood of citizens and families in Badger Hill who were very upset at having bought into a subdivision with only one means of egress. This town employed HTA to conduct a formal safety study and safety engineers went out and evaluated the conditions. The report was lengthy, but it was clear that what was allowed and what was all done with good intentions, did put citizens at risk for all the emergency services. The lesson learned was never again and while we may have countless mistakes in other areas; one, two, three wrongs don't make a right. If we continue to knowingly allow violations of common sense life safety issues, we're really setting ourselves in a bad position. Let's not continue to make mistakes that may or may not get resolved in short order.

Chairperson Langdell closed the public portion of the meeting.

J. Langdell said we are trying to find middle ground. We know what staff's position is and where the applicant is at this point in time, but is there something that might take this project to fruition? There is the possibility of bonding for the completion of the road or maybe a development agreement.

S. Duncanson expressed concern that this project was started in 2006 and now it's 2014. The scenic road hearing was in 2011. The subdivision of the three (3) lots was in 2012 and Nye Dr is still not finished to town specifications. He doesn't see a good track record here and we have four departments and Guy saying that a 2,300ft road is not acceptable. J. Langdell said this plan has a cistern and only eight (8) structures while Noon's Quarry is 3,219 ft long with thirty-two (32) houses. P. Amato added that he didn't feel Noon's Quarry was an unsafe street; however, this road is different because there is a light at the end of the tunnel to connect.

K. Bauer reiterated that there are more departmental objections than usual for this project and that carries more weight with her. J. Langdell said her interpretation of some of staff's comments is that they are not relative to other developments, but based on the experience and history of the short section of this development along Nye Dr. R. Haight explained that Nye Dr is a private drive and not a town road and while it does need to be built to a higher standard, the Town hasn't had to maintain it. The burden is to enforce and that is what DPW is complaining about. P. Amato said the Selectmen still have to deal with taxpayers about their roads. J. Langdell said you come to this Board asking for approval of a plan stating everything meets our requirements. We, in turn, expect the road to be built to town specifications and it wasn't. R. Haight said he understands and the next building permit will not be issued until the road is brought up to those standards. That is the guarantee, if it's not done then there are no building permits. The road will be brought up to town standards, no matter what. This plan is what we have control over; eight (8) lots on 2,300 ft of road. The Town will get a connection that will be built within five (5) years. We've given an end point, we have a design and everything is in place. P. Amato asked how we get assurances if the economy turns again. R. Haight said we're saying it will be built within five (5) years. C. Beer said that is not good enough. J. Langdell ended discussion on the history of the project by saying that the bottom line is to protect the municipality for the road connection. J. Heavisides interjected that when a town road is normally built, there are on site inspectors to ensure compliance with town specifications. Nye Dr was built as a private drive and he doubts there were any inspections during construction. When the new road goes in, the Town will have inspectors checking regularly to make sure it is to town standards and that should avoid some of the past history. J. Langdell said that still doesn't give any assurance that the last half of the road will be completed in five (5) years. R. Haight said we would be willing to put a bond in place for the remaining road to be built through gravel phase so that you would have that assurance. J. Plant said that's where the problem comes in; we've seen the stall in the past because of the market. If the market doesn't warrant the building out, then the connection won't go through and we're stuck with an unfinished road.

C. Beer said he also would like to see this built out because of the connection to Woodhawk Dr, but his main concern is that nobody can predict the future and it's entirely possible that this never gets connected. The applicant has made several strong arguments for why it will be connected and they are valid points, but he would want something to ensure the buildout through Woodhawk before approving this waiver. P. Amato brought up the eighty (80) upcoming lot line adjustments at Badger Hill with only one way out. J. Langdell clarified that those lot line adjustments are part of a previously approved development and not a new application. S. Duncanson added that we don't want to make another mistakes and we should go by staff recommendations. J. Langdell noted that we haven't really made mistakes and a brief discussion on past development ensued. C. Beer said that since this Board has flexibility for phasing, how many lots would be needed in the first year to cover the cost to build out the entire road? We could possibly exchange lot phasing for road construction and allow more lots up front to build out Woodhawk Dr without the Nye Dr extension. That way we have the connection and they have enough lots to afford to build the road. He would be more comfortable waiving the phasing requirements than waiving the dead end road requirements for only eight (8) lots. He then suggested 21 lots in year one, five lots in year two and one lot in year three if we have to go the full term or waiver the entire requirement. Discussion on the phasing and construction followed. R. Haight said he'd have to talk that over with the Colburns.

Chairperson Langdell called for a brief recess to allow the applicants to discuss the matter at hand.

R. Haight said the Colburns are agreeable to the twenty (20) lots up front and to putting the road in all the way through and after a brief discussion on the wetlands crossings, it was determined that the waiver would not be needed.

P. Amato brought up the fact that 938 feet of road will be built along another property line, owned by Eric Matson who without any contribution to the road construction could put in house lots. R. Haight said this road location made the most sense because of the land and how the wetlands flow to the north. Between the two wetland crossings maybe two to four driveways and lots could go in without putting in a short road but honestly, doesn't know. J. Langdell said those potential house lots are unintended consequences for both the applicant and the Town, but they would still have to come in with a subdivision application once the road is accepted by the Town. There are also some tradeoffs that could be done as part of any potential subdivision because some of that land abuts conservation land.

J. Langdell reviewed the new condition to put in the road, in its entirety to town specifications, up front, provided we approve phasing at twenty lots in year one, with an additional six lots in year two and one lot in year three. P. Amato said he wanted to be clear that the road has to be constructed, to town specifications with base coat and Nye Dr would be done in the second phase. Would the phasing be cumulative if they couldn't build twenty houses the first year? J. Levandowski replied that it doesn't matter how it's done, as long it's done as within the phasing timeframe. J. Langdell then brought up concern with the language of the open space note. R. Haight said the intent is to give the conservation easement up front for both parcels with the recording of the plan and then convey the land when the final building permit is issued. The caution of conveying the land prior to that is that we'd have to pay a current use penalty and a higher tax on a lot that's not sold. If the development is not finished and all the lots are not sold, the Town will still have the benefit of its use, no matter what. The assurance will be in place and the Town will have control over that. In addition it secures some of the trail system that's already being used by the Town. J. Langdell asked if this meets the spirit of the development regulations. J. Levandowski replied yes and noted that draft language has been submitted to the Conservation Commission for review.

P. Amato said if they've agreed to build the road all the way through in some timeframe, is there a need for bonding when the road is tied to the building permits. If the road doesn't get built, then we don't get any more houses. We will need bonding for the final coat and incidentals. Staff can come up with the language for that condition. Would the new road be called Woodhawk Dr when it is completed then Nye Dr would be re-created as part of phase 2. R. Haight replied correct.

J. Langdell reviewed Staff recommendations from the memo dated 5/6/14 and said that note #9 be revised to state that the conservation easement be in place and recorded with the plan.

S. Duncanson made a motion to grant the application with the conditions discussed; that Woodhawk Dr be constructed to town specifications with all infrastructure, base coat, drainage and cisterns be installed prior to issuance of a building permit; the building permits be phased as first year - twenty homes, second year - six homes and third year - one home; that the conservation easement be in place; that bonding be in place for the top coat; and any outstanding staff recommendations. P. Amato seconded for discussion and brought up note #13. J. Levandowski said note #13 will be deleted. Chairperson Langdell called for the vote. P. Amato, S. Robinson, J. Langdell, C. Beer, J. Plant and S. Duncanson voted in favor. K. Bauer was opposed. The motion carried by a vote of 6-1.

OLD BUSINESS:

Laurie Shiffer/Classic Bay Farm – Ponemah Hill Rd – Map 54, Lot 13-2; Major site plan to construct an indoor equestrian riding arena with attached stalls and associated site improvements.

Abutters present:

Annmarie Pintal Turcotte, Ponemah Hill Rd

John Hopfenspirger, Ponemah Hill Rd

Chairperson Langdell recognized:
Laurie Shiffer, Classic Bay Farms

Chad Branon, Fieldstone Land Consultants, PLLC
John Griffin, Griffin Law Office
Doug Bean, Blue Water Construction Group

C. Branon presented plans dated 4/18/14 and reviewed the recent activity. The building classification turned out to be very complicated and there were many meetings with town staff regarding the use, type and building layout. An agreement has been reached with the local code officials on the classification and as such, we've been able to address all outstanding comments. We are providing access to three sides of the building and the parking has been reconfigured. We've also made modifications to the site grading and will include a treatment swale to address stormwater concerns. We've added landscaping focused mainly along the common driveway and a small flower garden next to the building. A number of notes have been added to the plan to address staff comments and to restrict the use as noted on #18.

The applicant has agreed to place the following restrictions on the proposed use:

- A. The riding arena will be used for horses only. No public events, flea markets or competitions shall take place on the property.*
- B. There shall be no parking permitted at any time on the common driveway.*
- C. Overall building occupancy will be limited to forty-nine (49) persons at any one time.*
- D. There shall be no more than fifteen (15) horses on the property at any one time.*
- E. There shall be no more than five (5) horse trailers on the property at any one time.*

P. Amato inquired why limit the occupancy to 49 instead of 50. C. Branon replied that fifty (50) triggers a different classification on the building per the International Building Codes.

J. Plant questioned the staff comment pertaining to private use on page 2. J. Langdell referenced the 2/18/14 date of the memo and explained that the note is no longer pertinent and should have been updated. J. Langdell also stated that a lot of work has been done for this unique situation and the landscaping and parking restrictions help to address the abutter's concerns regarding visibility.

Chairperson opened the meeting for public input.

A. Pintal Turcotte reviewed the revised plans and asked if there was a time limit for the completion of the proposed landscaping. J. Langdell explained that the landscaping is part of the site plan and has to be completed prior to the issuance of the Certificate of Occupancy, which is required for any building regardless of its use. The other option such as in winter, bonding has to be put in place to cover the cost of the plantings. A. Pintal Turcotte said she was confused by the zoning but it seems like most of the issues were addressed. J. Langdell clarified that this is an allowed agricultural use with a commercial building in a residential zoning district.

L. Shiffer explained that she wanted to make sure her neighbors understood that this whole process has been done with their consideration in mind. That is the reason I fought hard for a wooden structure with a shingle roof versus a metal building that was pushed on me. I do share the driveway, but in general there hasn't been parking in the driveway and this set up will now allow me to go from the new barn directly to the ring without ever going on the driveway. This makes for a much better situation and now, we can even pave the driveway like Annmarie wanted to do. A. Pintal Turcotte asked if four (4) parking spaces were sufficient for forty-nine (49) people. C. Branon explained that the reason for the notation of forty-nine (49) people is for building classification and the four (4) spaces are sufficient for the operation of the business. We've had lengthy discussion with staff and this satisfies all local requirements.

C. Branon stated there was sufficient area for additional parking arrangements on the property if there were more than four (4) people and he showed the potential parking areas on the plan. J. Langdell noted that this falls into an "other" category in our development regulations and we could require more parking if we felt there was a need, but if the use changes or expands it would have to come back to the Board and a lengthy discussion on parking for various scenarios followed.

L. Shiffer said she explained her business back in February but stated that her lessons are private, one or two people and due to insurance and liability you can't have ten (10) people in the ring at the same time. She's been

running this business since 1995. The abutting properties have multiple owners during that time and parking has never gone past the V of the shared driveway. A. Pinal Turcotte said she agreed with Ms. Shiffer that this is adequate for the way things are now, but what happens when somebody else buys it, especially if you have a plan that allows for forty-nine (49) people at one time. J. Langdell said the restrictions are clearly stated on the plan and this is an enforceable set of criteria for Ms. Shiffer and for the next owners. If there were to be any change they would have to come back to the Board. A. Pinal Turcotte said she is fine with the way things are now but if the property changes in the future she wants to make sure that the current operation is preserved and not expanded. If the site plan that gets approved allows for a lot more than the current situation, it could become a problem.

J. Hopfenspirger thanked everyone for all the work put into this plan and then inquired what type of landscaping will be done. Will it take twenty-five years for the buffer and is there a landscaping plan? J. Langdell stated that there are minimum standards for landscaping. C. Branon said the plan calls for 2" to 2.5" caliper Winter King Hawthorne, 6-7' Eastern Arborvitae, and 6-7' Balsam Fir trees. J. Hopfenspirger said those trees are perfect. J. Levandowski noted that the minimum requirements are 6'. J. Hopfenspirger then asked if the Board could lower the restriction from 49 to 30. He has no problem with Laurie and loves seeing her horses out there, but what about the next owner and expressed his frustration with possible future scenarios.

G. Scaife said the specifications on the plan have been extremely helpful for staff to better understand the intended use and was something staff had asked for. Also, as previously stated, this is an enforceable document. The count of forty-nine (49) came from staff recommendation and that number, based on the code and the use, limits you to that number. The code is the code and that is not something we negotiate. Their application does not imply they would even get close to that number, but the code says that's the maximum you could have for that type of structure. J. Langdell said we are trying to balance the site plan with the code. C. Branon said under normal circumstances there wouldn't even be a note on the plan because the site restricts itself. What if Ms. Shiffer wants to hold a family reunion? It is obvious what the intention is and this is also where she lives. This plan it meets all local requirements and the note on the site plan has been added to reflect the lengthy review we've had and to make sure everybody is comfortable with how this building fits inside the International Building Code, the building classification and the construction materials. We would prefer to not change that note. The note is arbitrary as it pertains to a building permit item not something that a Planning Board would even review. The number should stay at forty-nine (49) as it has a purpose and a reference in the International Building Code. J. Langdell suggested that the note be amended to include the reason for the note, to give it context. C. Branon said we will work with staff to make sure the verbiage is correct.

J. Hopfenspirger said that the Planning Board has discretion, as discussed with the previous application, so you do have discretion with this code because it doesn't affect just them, but everybody in this area. J. Langdell clarified that this Board does not have any discretion relative to the International Building Codes. J. Hopfenspirger said you can add wording in order to make the approval; it's what happens afterwards because everybody will work the numbers to the max when it's good for them. You know how things work, this all gets approved and then down the road somebody else has to pay the price. J. Langdell said whether that line is on the plan or not, based on what this is being built as, the maximum occupancy is still forty-nine (49) according to the IBC. That doesn't change, in this building, on this site. J. Hopfenspirger disagreed, saying that's something I'm going to have to live with down the road. I will be coming back if it changes, with fire and brimstone, because it will be an issue and there won't be anything anybody can do about it.

J. Griffin explained that the reason the restrictions and use were put in place was due to the Planning Board's concerns if the property was sold. We understand that and the scope of Laurie's use, but also understand that she may sell in the future. During the formulation of these restrictions we never talked about the number of people that would be in the building at any one time. It was a surprise to me tonight when that was raised. We certainly put in provisions that there would be no public events and horses only, that there would only be five (5) trailers on site when Laurie takes her horses to a horse show. This is a minimization of what's been going on there for a long time. There will be less horses on the property and less stalls by taking everything indoors. We think these restrictions were done in good faith and are meant to provide comfort to the Board and the abutters in the event somebody else takes title to the property. These are on the plan and are enforceable and anyone can come in with fire and brimstone to enforce them.

A. Pinal Turcotte said she appreciated everyone working in such good faith to make this possible and keep everyone happy, but if the word is restriction and the building is 14,600SF, you could probably fit more than fifteen (15) horses in there. What does the International Building Code allow for that size building? Also, if you can place a restriction on the number of horses and trailers, then why not on the number of people, regardless of what the code allows. C. Branon said the proposed building is approximately 14,800 SF, of that area 10,200 SF is for the indoor riding arena and the remaining 4,000 SF is for the stalls, tack room and office. My understanding is that the Board asked the applicant to place limitations on the property. The fifteen (15) horse restriction was a voluntary restriction by the applicant. The restriction was borne by the applicant through discussion with the Board but these restrictions appear to be creating more concerns than offering more comfort. At the same time, everything we're proposing for this property is permitted without the restrictions and we have addressed local regulations as well as staff comments.

Chairperson Langdell closed the public portion of the meeting.

J. Langdell mentioned that the spelling on note 18 should be corrected.

S. Duncanson made a motion to approve the application as amended with note #18 C be revised to clarify the purpose of the note. P. Amato seconded and all in favor.

OTHER BUSINESS

Chairperson Langdell noted that the Board and town staff have been invited to the grand re-opening of Rite Aid at 86 Elm St on Saturday May 24th at 10:00AM.

S. Duncanson made a motion to adjourn. J. Plant seconded and all in favor. The meeting ended at 8:45pm.

MINUTES OF THE MAY 6, 2014 PLANNING BOARD PUBLIC HEARING APPROVED MAY 20, 2014